IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 12775 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODRAI RATANJI CHAMPANERIA & 1 - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR JAL SOLI UNWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 27/07/2007

ORAL JUDGMENT

1. Petitioners have sought cancellation of bail granted to respondent No.2 by order dated 18.04.2001 of this Court (Coram: H.K. Rathod, J.)

in Criminal Misc. Application No.1678 of 2001 under which the respondent concerned was required to file an undertaking and abide by the terms thereof. It was submitted by learned counsel Mr.Bharda, appearing for the petitioners, that the undertaking pursuant to the aforesaid order was filed in the Court for the purpose of compliance of the conditions subject to which the respondent was released on bail, but thereafter, the respondent was dithering in complying with the statements made in the undertaking and, therefore, the bail was liable to be cancelled. It was further submitted by Mr.Bharda that even as the respondent was required to handover one flat to each of the petitioners in the building undertaken to be newly constructed by the respondent without payment of any additional amount, the respondent was claiming various amounts by way of stamp duty, registration fee, maintenance charges, typing and xerox and legal expenses as also towards Value Added Tax. The respondent had even threatened by legal notice

dated 25.06.2007 that, if the total amount of Rs.70,000/- claimed by the respondent were not paid, it would be presumed that the petitioners were not interested in reclaiming the flat in the building which was reconstructed after collapse of the building due to the earthquake, according to the submission. Learned counsel Ms.Varsi, appearing with Mr.Unwala for respondent No.2, submitted that the additional amounts required to be paid by the petitioners were not claimed by the respondent towards value of the flat but they were necessary expenditure for proper transfer of the newly constructed flat and towards maintenance thereof in the future. She conceded that the respondent could not have claimed Rs.25,500/- towards Value Added Tax as it was not payable by the petitioners. In view of that fair statement, learned counsel Mr.Bharda also stated that the petitioners would have no objection to pay the remaining amount within a period of one month on condition that clear and peaceful possession of the flats is handed over to the

petitioners in terms of the undertaking within a period of 15 days i.e. on or before 11.08.2007.

2. On the basis of the above understanding and by consent, the petition is disposed with the direction that in case of failure of the respondent to abide by the statement recorded hereinabove and in case of respondent not handing over the possession of the flats in question to the petitioners on or before 11.08.2007, bail granted to respondent No.2 vide aforesaid order dated 18.04.2001, shall stand cancelled and he will be liable to be arrested and imprisoned without requiring any further orders. Rule is made absolute accordingly with no order as to costs.

(D.H.WAGHELA, J.)

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